

# Senate Study Bill 3022

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON REDFERN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to an individual's right of publicity, providing  
2 remedies, and including an applicability provision.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5079SC 80  
5 rh/gg/14

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1 1 Section 1. NEW SECTION. 548A.1 SHORT TITLE.  
1 2 This chapter shall be known and may be cited as the "Right  
1 3 of Publicity Act".  
1 4 Sec. 2. NEW SECTION. 548A.2 DEFINITIONS.  
1 5 As used in this chapter, unless the context otherwise  
1 6 requires:  
1 7 1. "Claimant" means either of the following:  
1 8 a. A party in an infringement action under this chapter,  
1 9 who alleges a violation of section 548A.4 and seeks relief  
1 10 under section 548A.8.  
1 11 b. A person with an interest in an individual's right of  
1 12 publicity who registers a claim regarding that interest with  
1 13 the secretary of state pursuant to section 548A.14.  
1 14 2. "Commercial purpose" means the public use or holding  
1 15 out of an individual's identity, relating to at least one of  
1 16 the following:  
1 17 a. In connection with the offering for sale or sale of  
1 18 goods or services.  
1 19 b. For the purpose of advertising or promoting the sale of  
1 20 goods or services.  
1 21 c. For the purpose of fundraising.  
1 22 3. "Identity" means any attribute of an individual that  
1 23 serves to identify that individual to a reasonable viewer or  
1 24 listener, including, but not limited to, name, nickname,  
1 25 voice, signature, photograph, image, performing style,  
1 26 distinctive costume or character, likeness, or any other  
1 27 indicia closely identified with an individual.  
1 28 4. "Individual" means a living or deceased natural person.  
1 29 Sec. 3. NEW SECTION. 548A.3 RECOGNITION OF RIGHT OF  
1 30 PUBLICITY.  
1 31 1. An individual has the right to control and to choose  
1 32 whether and how to use the individual's identity for a  
1 33 commercial purpose. This right is the individual's right of  
1 34 publicity.  
1 35 2. In order to preserve a right of publicity under this  
2 1 chapter, any of the following may register a claim with the  
2 2 secretary of state regarding an interest in an individual's  
2 3 right of publicity pursuant to section 548A.14:  
2 4 a. The individual.  
2 5 b. An authorized legal representative of the individual  
2 6 who has written consent from the individual to authorize use  
2 7 of the individual's right of publicity for a commercial  
2 8 purpose.  
2 9 c. A person identified in section 548A.12 who holds an  
2 10 interest in the individual's right of publicity.  
2 11 Sec. 4. NEW SECTION. 548A.4 INFRINGEMENT.  
2 12 1. The use or threatened use of an individual's identity  
2 13 without prior written consent, in such a way that the  
2 14 individual can reasonably be identified, for a commercial  
2 15 purpose during the lifetime of the individual or for thirty  
2 16 years thereafter, is a violation of the individual's right of  
2 17 publicity.  
2 18 2. Prior written consent may be obtained from any of the  
2 19 following:  
2 20 a. The individual.  
2 21 b. An authorized legal representative of the individual  
2 22 who has written consent from the individual to authorize use

2 23 of the individual's right of publicity for a commercial  
2 24 purpose.

2 25 c. A person identified in section 548A.12 who holds an  
2 26 interest in the individual's right of publicity.

2 27 3. An individual is not required to use or authorize the  
2 28 use of the individual's right of publicity during the  
2 29 individual's lifetime.

2 30 Sec. 5. NEW SECTION. 548A.5 STATUTE OF LIMITATIONS.  
2 31 An action under this chapter shall not be brought more than  
2 32 three years from the date of the infringement, or the date  
2 33 that the claimant should have reasonably known of the  
2 34 infringement.

2 35 Sec. 6. NEW SECTION. 548A.6 SCOPE.

3 1 This chapter does not apply to any of the following:

3 2 1. The use of an individual's identity in an attempt to  
3 3 portray, describe, or impersonate that individual in a live  
3 4 performance, single and original works of fine art, play,  
3 5 book, article, musical work, film, radio, television, or other  
3 6 audio, visual, or audiovisual work, provided that the  
3 7 foregoing does not constitute in and of itself commercial  
3 8 advertising, promoting, or offering goods or services for  
3 9 sale, or does not constitute fund-raising.

3 10 2. The use of an individual's identity for any news,  
3 11 public affairs, or sports broadcast or account, or any  
3 12 political campaign.

3 13 3. The use of an individual's identity in truthfully  
3 14 identifying the person as the author of a particular work or  
3 15 program or the performer in a particular performance.

3 16 4. Promotional materials, advertisements, or commercial  
3 17 announcements for a use described under subsection 1, 2, or 3.

3 18 5. The use of photographs, videotapes, or images by a  
3 19 person practicing the profession of photography to exhibit in  
3 20 or about such professional photographer's place of business or  
3 21 portfolio including specimens of the professional  
3 22 photographer's work, unless the exhibition is continued by the  
3 23 professional photographer after written notice objecting to  
3 24 the exhibition has been given by the individual portrayed.

3 25 6. The use of an individual's identity in a videotaped or  
3 26 recorded deposition or in a legal proceeding or in any other  
3 27 manner associated with the foregoing.

3 28 Sec. 7. NEW SECTION. 548A.7 ENFORCEMENT OF RIGHTS AND  
3 29 REMEDIES.

3 30 1. An individual's right of publicity and remedies for  
3 31 infringement of such a right under this chapter may be  
3 32 exercised and enforced by any of the following:

3 33 a. The individual or the individual's authorized legal  
3 34 representative.

3 35 b. A person to whom the right of publicity, in whole or in  
4 1 part, has been transferred in writing under section 548A.12.

4 2 c. After the death of an individual who has not  
4 3 transferred the individual's right of publicity by written  
4 4 transfer under section 548A.12, any person or persons who  
4 5 individually or collectively possess at least a one-quarter  
4 6 interest in the individual's right of publicity.

4 7 2. Each person described in subsection 1, paragraph "c",  
4 8 shall make a proportional accounting to, and shall act at all  
4 9 times in good faith with respect to, any other person in whom  
4 10 an interest in an individual's right of publicity being  
4 11 enforced has vested.

4 12 Sec. 8. NEW SECTION. 548A.8 VIOLATIONS == MONETARY  
4 13 RELIEF == PUNITIVE DAMAGES.

4 14 1. Violators of section 548A.4 are liable for one of the  
4 15 following:

4 16 a. Actual damages and any profits of the infringer, as  
4 17 provided in subsection 2.

4 18 b. Statutory damages, in the event that a claimant is  
4 19 eligible for and elects to receive this alternative form of  
4 20 relief, as provided in subsection 3.

4 21 2. a. Actual damages are those damages caused by the  
4 22 unauthorized use of an individual's identity.

4 23 b. When establishing profits, the claimant is required to  
4 24 prove the damages or gross revenue attributable to the  
4 25 unauthorized use, and an infringer is required to prove  
4 26 properly deductible expenses.

4 27 3. Before the entry of judgment, as an alternative to  
4 28 recovery of actual damages and profits, a claimant may elect  
4 29 statutory damages for each single act of infringement if a  
4 30 valid certificate of registration has been applied for or  
4 31 received from the secretary of state pursuant to section  
4 32 548A.14 before the unauthorized use began or within three  
4 33 months of the date of the individual's death, of a sum of not

4 34 less than seven hundred fifty dollars but not more than fifty  
4 35 thousand dollars, as the court deems just.

5 1 4. In addition to damages awarded under subsection 2 or 3,  
5 2 punitive damages may be awarded against a person who  
5 3 knowingly, willfully, or intentionally infringes upon an  
5 4 individual's right of publicity.

5 5 Sec. 9. NEW SECTION. 548A.9 INJUNCTIVE RELIEF.  
5 6 Notwithstanding the registration under section 548A.14 that  
5 7 must precede a filing of an action for infringement under  
5 8 section 548A.8, the court may issue a temporary restraining  
5 9 order, preliminary injunction, or permanent injunction, as may  
5 10 be appropriate, for any infringement or threatened  
5 11 infringement of an individual's right of publicity.

5 12 Sec. 10. NEW SECTION. 548A.10 ATTORNEY FEES == COSTS.  
5 13 In addition to any other damages or injunctive relief, the  
5 14 court may award to the claimant reasonable attorney fees,  
5 15 costs, and expenses relating to an action under this chapter.

5 16 Sec. 11. NEW SECTION. 548A.11 IMPOUNDMENT ==  
5 17 DESTRUCTION.

5 18 1. During any period that an action under this chapter is  
5 19 pending, the court may order the impoundment of any of the  
5 20 following:

5 21 a. Goods, merchandise, or other materials claimed to have  
5 22 been made or used in violation of an individual's right of  
5 23 publicity.

5 24 b. Plates, molds, masters, tapes, digital media, or any  
5 25 other item or material from which the items described in  
5 26 paragraph "a" may be manufactured or reproduced.

5 27 2. As part of the final judgment or order, the court may  
5 28 order the destruction of the goods and materials described in  
5 29 subsection 1.

5 30 Sec. 12. NEW SECTION. 548A.12 TRANSFERABILITY,  
5 31 DESCENDABILITY, AND DIVISIBILITY.

5 32 1. A right of publicity regulated under this chapter is a  
5 33 property right that is freely transferable, in whole or in  
5 34 part, to any person, either by written transfer, including but  
5 35 not limited to wills and trusts, or by intestate succession  
6 1 only to an individual's spouse, parents, children,  
6 2 grandchildren, or siblings.

6 3 2. The right of publicity regulated under this chapter is  
6 4 not subject to levy or attachment and shall not be the subject  
6 5 of a security interest.

6 6 3. This section does not limit the ability of any party to  
6 7 levy, attach, or obtain a security interest in the proceeds of  
6 8 a right of publicity regulated under this chapter or the  
6 9 proceeds of the exercise of such a right of publicity.

6 10 Sec. 13. NEW SECTION. 548A.13 TERMINATION OF RIGHTS OF  
6 11 DECEASED INDIVIDUAL.

6 12 The rights set forth in this chapter terminate if both of  
6 13 the following occur:

6 14 1. A deceased individual has not transferred the  
6 15 individual's rights in writing pursuant to section 548A.12.

6 16 2. The deceased individual has no living spouse, parents,  
6 17 children, grandchildren, or siblings.

6 18 Sec. 14. NEW SECTION. 548A.14 REGISTRATION ==  
6 19 PREREQUISITE FOR INFRINGEMENT ACTION.

6 20 1. A claimant seeking to protect or assert rights through  
6 21 litigation under this chapter shall first register an interest  
6 22 in an individual's right of publicity by filing an application  
6 23 with the secretary of state substantially in the form provided  
6 24 in this section. The initial application fee shall be set at  
6 25 fifty dollars. The application shall be verified, and shall  
6 26 include the name of the individual, the date of death of the  
6 27 individual if applicable, including a copy of the death  
6 28 certificate, the name and address of the claimant, the basis  
6 29 of the claim, the specific rights claimed, and the duration of  
6 30 the claim. The application shall be amended with current  
6 31 information from time to time, with proper verification, and a  
6 32 fifteen dollar fee.

6 33 2. Records of an individual's right of publicity claim  
6 34 shall be destroyed by the secretary of state thirty-three  
6 35 years after the date of death of the individual. An official  
7 1 death certificate filed with the secretary of state shall  
7 2 constitute formal notification of the death of the individual,  
7 3 and shall be used to calculate recordkeeping time periods.

7 4 3. All right of publicity claims shall be public record,  
7 5 though the secretary of state may, notwithstanding chapter 22,  
7 6 designate by rule that certain personally identifiable  
7 7 information such as residence address and residence telephone  
7 8 numbers filed with an individual's claim remain confidential  
7 9 in order to protect an individual's privacy. Registration is

prima facie evidence of a valid claim of right of publicity.  
a. An action for infringement of an individual's right of  
publicity under this chapter shall not be instituted until a  
claimant has applied for or received a certificate of  
registration of the individual's right of publicity claim from  
the secretary of state.  
b. An election for statutory damages in an action for  
infringement of an individual's right of publicity under this  
chapter shall not be made by a claimant unless a claimant has  
applied for or received a certificate of registration of the  
individual's right of publicity claim from the secretary of  
state as provided in section 548A.8.

RIGHT OF PUBLICITY REGISTRATION OF CLAIMANT

Name of individual == legal name  
.....  
Also known as .....  
Date of death ..... Not applicable  
Name of claimant .....  
Address of claimant .....  
Percentage interest claimed ... 100% ... 50% ... 25% ... %  
The above percentage is claimed in .... all types of rights,  
or in .... limited rights described as follows:.....  
.....  
I make this claim as  
.... The individual.  
1 .... A successor-in-interest on the basis that I am the surviving  
2 .... spouse .... child .... grandchild  
3 .... parent .... sibling.  
4 OR  
5 .... The transferee of property rights by the individual to me  
6 by .... contract .... trust .... will.  
7 Duration of claim .....  
8 .....  
9 Other known interest holders  
10 Name .....  
11 Address .....  
12 .....  
13 Percentage interest claimed ... 100% ... 50% ... 25% ... %  
14 The above percentage is claimed in .... all types of rights,  
15 or in .... limited rights described as follows: .....  
16 .....  
17 Other known interest holders  
18 Name .....  
19 Address .....  
20 .....  
21 Percentage interest claimed ... 100% ... 50% ... 25% ... %  
22 The above percentage is claimed in .... all types of rights,  
23 or in .... limited rights described as follows: .....  
24 .....  
25 I declare under penalty of perjury and under the laws of the  
26 State of Iowa that the foregoing is true and correct.  
27 Dated .....  
28 .....  
29 ..... Signature of claimant  
30 .....  
31 ..... Typed name of claimant

MAIL TO: Iowa Secretary of State, ..... State Office  
Building, Des Moines, IA

Sec. 15. NEW SECTION. 548A.15 EFFECT OF OTHER LAWS.  
1. The rights and remedies in this chapter supersede  
common law rights of publicity on and after July 1, 2004, but  
do not affect any common law rights of publicity that existed  
prior to July 1, 2004.  
2. Except as provided in subsection 1, the rights and  
remedies in this chapter are in addition to any other rights  
and remedies provided by law including, but not limited to,  
the rights of privacy.

Sec. 16. NEW SECTION. 548A.16 RULEMAKING AUTHORITY.  
The secretary of state shall adopt rules as necessary to  
administer this chapter. The secretary of state shall adopt  
rules relating to the following:  
1. Registration process for right of publicity claims.  
2. Amendments to right of publicity claims.  
3. Confidential information in applications for right of  
publicity claims.  
4. Recordkeeping requirements.  
5. Proof of application for right of publicity claim.

Sec. 17. APPLICABILITY. This Act applies to acts or  
events that take place within this state on or after July 1,  
2004.

EXPLANATION

9 21  
9 22 This bill creates new Code chapter 548A, designated as the  
9 23 right of publicity Act. It recognizes and regulates a type of  
9 24 personal property in the form of a person's identity that is  
9 25 used for commercial purposes.  
9 26 The bill includes definitions in Code section 548A.2 for  
9 27 "claimant", "commercial purposes", "identity", and  
9 28 "individual", and articulates in Code section 548A.3 the  
9 29 general right of an individual to control whether and how to  
9 30 use the individual's identity for commercial purposes. The  
9 31 persons designated to exercise rights under the chapter are  
9 32 the individual, an authorized legal representative possessing  
9 33 written consent from the individual to authorize use of the  
9 34 individual's right of publicity for a commercial purpose,  
9 35 transferees of the right of publicity designated in writing,  
10 1 and certain limited categories of heirs in the event of  
10 2 intestate succession. Code section 548A.4 also more precisely  
10 3 defines a violation of an individual's right of publicity  
10 4 according to the use or threatened use of an individual's  
10 5 identity without prior written consent, for a commercial  
10 6 purpose, during the lifetime of the individual or 30 years  
10 7 thereafter.  
10 8 Several sections in the bill address remedies for  
10 9 infringement of an individual's right of publicity. Code  
10 10 section 548A.8 provides for recovery of actual damages and  
10 11 profits from an infringer, and allows for the award of  
10 12 punitive damages against a person who knowingly, willfully, or  
10 13 intentionally infringes upon an individual's right of  
10 14 publicity. In addition, Code section 548A.8 provides an  
10 15 alternative form of damages for a party that has previously  
10 16 registered its right of publicity claim with the secretary of  
10 17 state pursuant to Code section 548A.14, or registered the  
10 18 claim within three months of the individual's death. In that  
10 19 event, a party may elect to receive statutory damages for each  
10 20 single act of infringement in an amount of between \$750 and  
10 21 \$50,000, according to what the court deems just. The court is  
10 22 also authorized to order injunctive relief under Code section  
10 23 548A.9, the award of attorney fees, costs, and expenses under  
10 24 Code section 548A.10, and the impoundment and destruction of  
10 25 infringing materials under Code section 548A.11.  
10 26 Code section 548A.12 provides that an individual may  
10 27 transfer the individual's right of publicity, in whole or in  
10 28 part, to any person by any written means, including by will or  
10 29 trust. The section also specifies limited transferability by  
10 30 intestate succession only to an individual's spouse, parents,  
10 31 children, grandchildren, or siblings. If a deceased  
10 32 individual has not transferred the individual's right of  
10 33 publicity by such written means and has no such categories of  
10 34 living relatives, the deceased individual's right of publicity  
10 35 terminates upon death and becomes part of the public domain,  
11 1 pursuant to Code section 548A.13.  
11 2 Code section 548A.14 provides an application process for  
11 3 registering claims in an individual's right of publicity with  
11 4 the secretary of state, provides a form, and sets the initial  
11 5 application fee at \$50. The secretary of state must keep  
11 6 records on file for 33 years following the death of an  
11 7 individual. All claims are public records, but the secretary  
11 8 of state may by rule designate certain personally identifiable  
11 9 information, such as the individual's address and phone  
11 10 number, confidential in order to protect an individual's  
11 11 privacy. The secretary of state is authorized to adopt rules  
11 12 as necessary under the chapter, and is directed to adopt rules  
11 13 on certain specific topics pursuant to Code section 548A.16.  
11 14 Code section 548A.5 sets a three-year statute of  
11 15 limitations on actions brought under the chapter, according to  
11 16 the date of infringement, or according to when the claimant  
11 17 should have reasonably known of the infringement.  
11 18 Code section 548A.6 sets forth certain specific  
11 19 circumstances that are beyond the scope of the chapter such as  
11 20 certain artistic or newsworthy uses of an individual's  
11 21 identity. Code section 548A.15 provides that the right to  
11 22 publicity Act supersedes common law rights of publicity as of  
11 23 the effective date of the legislation, but provides that the  
11 24 legislation is intended to supplement other legal rights such  
11 25 as the right of privacy.  
11 26 The bill is applicable to acts or events that take place  
11 27 within the state of Iowa on or after July 1, 2004.  
11 28 LSB 5079SC 80  
11 29 rh/gg/14